

**UNITED STATES DISTRICT COURT**

# DISTRICT OF NEVADA

GREGORY HUGHES,

)

vs.

BANK OF AMERICA CORP. et al.,

## ORDER

#### Defendants.

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This is a residential foreclosure avoidance case involving one property. Several motions  
are pending before the Court.

## **FACTS AND PROCEDURAL HISTORY**

Plaintiff Gregory Hughes gave lender Bank of America, N.A. (“BOA”) a promissory note  
5,000 secured by a first deed of trust (“FDOT”) against real property at 2995 Shady Creek  
no, NV 89523 (the “Property”). (*See* FDOT 1–3, Dec. 15, 2005, ECF No. 48-1). Plaintiff  
gave BOA a second deed of trust (“SDOT”) against the Property to secure a home equity  
credit with a credit limit of \$49,375. (*See* SDOT 1–3, Aug. 24, 2007, ECF No. 48-2).

22 PRLAP, Inc. was the trustee on both deeds of trust, and Mortgage Electronic Registration  
23 Systems, Inc. (“MERS”) was party to neither of them. (*See* FDOT 2; SDOT 2). BOA substituted  
24 Recontrust Co., N.A. (“Recontrust”) as trustee on the FDOT. (*See* Substitution, Jan, 27, 2010,  
25 ECF No. 48-3). The same day, First American Title Insurance Co. (“First American”),

1 purporting to be Recontrust's agent, filed the first notice of default ("FNOD") against the  
2 Property, but Recontrust later rescinded it. (*See* FNOD, Jan. 27, 2010, ECF No. 48-4; Rescission,  
3 Apr. 22, 2010, ECF No. 48-5). BOA then assigned the FNOD and any notes it secured to BAC  
4 Home Loans Servicing, LP ("BAC"). (*See* Assignment, Jan. 5, 2011, ECF No. 48-6). The same  
5 day, BAC, GP, purporting to be BAC's general partner, then substituted Recontrust as trustee on  
6 the FDOT. (*See* Substitution, Jan. 5, 2011, ECF No. 48-7).<sup>1</sup> The same day, First American, again  
7 purporting to be Recontrust's agent, then filed the second notice of default ("SNOD") against the  
8 Property. (*See* SNOD, Jan. 5, 2011, ECF No. 48-8). The State of Nevada Foreclosure Mediation  
9 Program issued its certificate permitting foreclosure to proceed, because the program did not  
10 apply to the Property. (*See* Certificate, June 20, 2011, ECF No. 48-9). Recontrust noticed a  
11 trustee's sale on the Property for August 3, 2011. (*See* Notice of Sale, July 11, 2011, ECF No.  
12 48-10). The public records also indicate that the City of Reno filed at least three liens against the  
13 property for unpaid sewer service bills over the last three years, and that Recontrust sold the  
14 Property at a trustee's sale to the Federal national Mortgage Association ("Fannie Mae") for  
15 \$371,238.48 on February 27, 2012.

16 On June 9, 2011, Plaintiff, represented by counsel, sued BOA, BAC, Recontrust, PRLAP,  
17 First American, and Charlotte Olmos in state court based upon the foreclosure, and Defendants  
18 removed to this Court. (*See* Case No. 3:11-cv-617). Finding the foreclosure to have been proper,  
19 the Court granted Defendants' motion to dismiss and to expunge the *lis pendens*. Plaintiff did  
20 not appeal.

21 Plaintiff then sued Bank of America Corp. ("BOA Corp."), BOA, BAC, Recontrust,  
22 Fannie Mae, the Washoe County Recorder's Office (the "Recorder"), and Kathy Burke *in pro se*

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24 <sup>1</sup>Because BOA had already substituted Recontrust as the trustee at a time when BOA was  
25 the beneficiary, the later "substitution" of Recontrust was superfluous, and the Court therefore  
need not examine whether BAC, GP in fact had the proper agency to substitute the trustee on  
behalf of BAC.

1 in state court on thirteen nominal causes of action<sup>2</sup>: (1) Real Estate Settlement Procedures Act  
2 (“RESPA”) violations; (2) Breach of Contract (failure to comply with HUD regulations before  
3 foreclosure, as required by the deed of trust); (3) “Unreasonable Collection Efforts”; (4)  
4 Intentional Misrepresentation (accepting payments but not applying them to Plaintiff’s account);  
5 (5) Fair Debt Collection Practices Act (“FDCPA”) violations; (6) violations of the “FTC  
6 Safeguards Rule,” 67 Fed. Reg. 36484; (7) Racketeer and Corrupt Organizations Act (“RICO”)  
7 violations; (8) Abuse of Process; (9) Intentional Misrepresentation (falsely claiming ownership of  
8 the promissory note); (10) “Bad Faith Bargaining”; (11) False Pretenses; (12) “Filing a False  
9 Certificate (Robosigning”); and (13) Intentional Infliction of Emotional Distress (“IIED”).

10 Defendants removed. The Court denied a motion to remand and dismissed all claims except the  
11 first (RESPA), sixth (FTC Safeguards Rule), seventh (RICO), and thirteenth (IIED) as precluded  
12 as against BOA, BAC, and Recontrust. The Court also granted Defendant Kathryn Burke’s  
13 motion to dismiss filed in state court when Plaintiff failed to respond thereto after having been  
14 given a *Klingele* notice. All parties but the Recorder moved to dismiss. The Court granted that  
15 motion and ordered Plaintiff to show cause within fourteen days why the claims should not be  
16 dismissed as against the Recorder, as well.

17 Plaintiff did not show cause within fourteen days and has not attempted to show cause for  
18 several months. Rather, Plaintiff filed a motion for permission to appeal, two motions to stay  
19 pending appeal, and a notice of appeal. The Court of Appeals dismissed the appeal for lack of  
20 jurisdiction. The Court denies the motion for permission to appeal, which it interprets as a  
21 motion under either Rule 54(b) or 28 U.S.C. § 1292(b). The Court will not certify for appeal  
22 under either of those provisions, because the Court finally adjudicates the remainder of the case  
23 via the present Order. The Court of Appeals will now have jurisdiction over the entire case

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25 <sup>2</sup>The causes of action are listed as 1–7 and 9–14. (See generally Compl., July 30, 2012,  
ECF No. 1-1, at 5).

1 under § 1291. Nor will the Court grant sanctions against defendants for failure to make initial  
2 disclosures under Rule 26(a). Plaintiff filed the motion for sanctions on January 6, 2014. The  
3 Scheduling Order had issued one month earlier, and discovery was to be open for six months.  
4 All Defendants except the Recorder were dismissed on January 10, 2014, and Defendants are not  
5 expected to engage in discovery while a motion to dismiss is pending. Finally, the Recorder had  
6 only been joined via the Amended Complaint filed four days before the sanctions motion.

7 **CONCLUSION**

8 IT IS HEREBY ORDERED that the Motion for Sanctions (ECF No. 62) is DENIED.

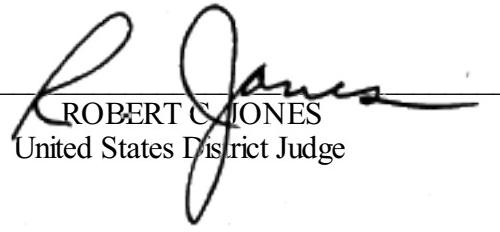
9 IT IS FURTHER ORDERED that the Motion for Permission to Appeal (ECF No. 67) and  
10 the Motions for Stay (ECF Nos. 68, 74) are DENIED as moot.

11 IT IS FURTHER ORDERED that the Motion to Waive Fees for Appeal (ECF No. 69) is  
12 DENIED for lack of jurisdiction. Plaintiff must address motions on appeal to the Court of  
13 Appeals.

14 IT IS FURTHER ORDERED that the remaining parties are DISMISSED, and the Clerk  
15 shall enter judgment and close the case.

16 IT IS SO ORDERED.

17 Dated this 16th day of June, 2014.

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ROBERT C. JONES

19 United States District Judge

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